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| 10/557,297 | 11/18/2005 | Gianni Perdomi | MI 6108 (US) | 7324 |
| 34872 | 7550 | 09/15/2009 | EXAMINER | |
| Basell USA Inc. Delaware Corporate Center II 2 Righter Parkway, Suite #300 Wilmington, DE 19803 | | | NELSON, MICHAEL B | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 1794 | |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/557,297

Applicant(s)

PERDOMI, GIANNI

Examiner

MICHAEL B. NELSON

Art Unit

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 June 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SF/ICE)
Paper No(s)/Mail Date 06/24/09.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. Applicant's amendments filed on 06/24/09 have been entered. Claims 1-10 are currently under examination on the merits.

Examiner's Note

2. The applicant has added claim 10 which contains the language "consisting essentially of." The combination of this language with specific percentage ranges renders the scope of the "consisting essentially of" language vague. It is unclear how a resin composition with ranges which are specifically set out can be further limited by the phrase in question since any prior art which reads on the ranges would also be considered to "consist essentially of" in that by having the claimed ranges it would obviously be considered to possess the basic and novel characteristics of the claimed invention even if other compounds were present in the mixture (i.e. the other compounds would not materially affect the characteristics of the mixture).

3. While it is recognized that the phrase "consisting essentially of" narrows the scope of the claims to the specified materials and those which do not materially affect the basic and novel characteristics of the claimed invention, absent a clear indication of what the basic and novel characteristics are, "consisting essentially of" is construed as equivalent to "comprising". Further, the burden is on the applicant to show that the additional ingredients in the prior art, i.e. the composition of Karim et al., would in fact be excluded from the claims and that such ingredients would materially change the characteristics of the applicant's invention, See MPEP 2111.03.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
 2. Ascertaining the differences between the prior art and the claims at issue.
 3. Resolving the level of ordinary skill in the pertinent art.
 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
6. Claims 1-3, 6, 7 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Karim et al. (U.S. 4,337,298).
7. Regarding claims 1, 6 and 7, Karim et al. discloses a polymer blend composition of an ethylene copolymer (C1, L50-68), which reads on the instant "interpolymer of ethylene," and a low density ethylene polymer (C1, L35-50), which reads on the instant component Iii. The ethylene copolymer is disclosed as being a copolymer of ethylene and a methacrylic acid ester which reads on the instant comonomer type (I) (C1, L55) and the amount of acrylate is disclosed as being between 4 and 12% which reads on the instant claimed range (C1, L65-68). While no particular density is disclosed at C1, L50-68, given the wide range of melt indexes (i.e. 1-100, C1, L59), one having ordinary skill in the art would expect some of the melt indexes to correspond to resin compositions having densities within the claimed range (i.e. the ethylene

methacrylate copolymers in the instant specification at page 12 have melt flow rates of around 2). The low density ethylene polymer (density of less than 0.93 and MFR of between 0.5 and 5) is disclosed as being copolymerized with a higher alpha-olefin of three carbons or more (C1, L35-50). While the exact amount of higher alpha olefin is not disclosed, one having ordinary skill would expect the amount of higher alpha olefin, which is being selected so as to maintain the disclosed density and melt flow rates, to lie within the instant claimed range.

Regarding the relative amounts of ethylene copolymer to LDPE, Karim et al. discloses that the relative amounts of the components in the overall polymer blend are subject to optimization based on the desired end use (C4, L30-50). The relative amounts of ethylene copolymer and LDPE are specifically mentioned as being one such optimizable variable (C4, L38). Hence one having ordinary skill in the art would optimize the relative amounts of the ethylene copolymer and the LDPE in order to adjust the particular mechanical properties of the film, as suggested by Karim et al.

Regarding the various mechanical strength properties in the instant claims, one having ordinary skill in the art would have adjusted the particular tear and mechanical strength properties of the blend of Karim et al. in order to optimize it for the particular end use (i.e. as suggested at C4, L30-50).

Regarding the preambles of claims 1, 6 and 7 (i.e. polymer blend, container, and stretch wrap film), Karim et al. discloses that the polymer composition has properties which would make it a suitable stock material for a wide variety of applications (C5, L5-50), including laminated into film form (C5, L15-25). One having ordinary skill in the art would expect these

properties (especially the adhesive properties) to lend themselves to applications which result in the film being used to contain other articles in a stretch wrap manner.

Regarding claims 2 and 3, Karim et al. discloses all of the limitations as set forth above. Additionally, Karim et al. discloses that the ethylene copolymer be a copolymer of ethylene and methacrylate (C1, L55). Karim et al. also discloses the LDPE contain alpha olefins of three carbons or higher (C1, L45-50).

8. Claims 4, 5, 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Karim et al. (U.S. 4,337,298) as applied to claims 1 and 7 above, and further in view of Cometto et. al (WO 9520009 A1).

Regarding claims 4, 5, 8 and 9, Karim et al. discloses all of the limitations as set forth above. Karim et al. does not disclose the particular composition as instantly claimed for component II ii. Cometto et al. discloses a a polymer blend comprising a random polymer of ethylene blended with a random interpolymer of propylene

(See page 4, the described polymeric compositions is the polymer blend)
wherein the random polymer of ethylene is an ethylene-butene-1 copolymer (claim 4)

(See page 7, component (a) corresponds to the random polymer of
ethylene and a copolymer of ethylene and butene-1 is equivalent to an
ethylene-butene-1 copolymer)

and wherein the random polymer of propylene is a propylene-ethylene-butene-1
terpolymer. (claim 5)

(See page 7, component (b) corresponds to the random polymer of propylene and a copolymer of propylene with ethylene and butene-1 is equivalent to an propylene-ethylene-butene-1 terpolymer)

Cometto et. al further discloses that the polymer blend with the particular random polymers of ethylene and propylene has advantages of improved processing characteristics and mechanical properties, including, among others, impact resistance and tear resistance. These properties are improved over the alternative conventional polyethylene polymers, (i.e. the LDPE used in Karim et al.) (See Page 3).

It would have been obvious to one having ordinary skill in the art at the time of the invention to have modified the polymer blend of Karim et. al, by substituting the low density polyethylene with the polymer blend comprising a random polymer of ethylene blended with a random interpolymer of propylene wherein the random polymer of ethylene is a ethylene-butene-1 copolymer and wherein the random polymer of propylene is a propylene-ethylene-butene-1 terpolymer as taught by Cometto et. al for the purpose of improving the processing characteristics and the mechanical properties.

Modified Karim et al. is silent as to the haze of the film being less than 16% however given the substantially similar polymer blend composition of the components in modified Karim et al. with the instant film, it will, inherently, possess the claimed properties. See MPEP 2112.

Response to Arguments

9. Applicant's arguments filed on 06/24/09 have been considered but are not persuasive.

10. Regarding applicant's arguments against the Karim et al. reference on the grounds that it does not disclose the component Iii. The examiner disagrees. The Karim et al. reference discloses that the ethylene compound can be made with lower pressure processes by copolymerizing ethylene and C3 and higher alpha-olefins. One having ordinary skill in the art would recognize that the low density ethylenes produced by this process are linear low density ethylenes. Applicant also argues that the higher-alpha olefin is not specified in Karim et al., however Karim et al. discloses C3 and higher alpha olefins which reads on the instantly claimed alpha-olefins. Karim et al. does not disclose the exact amount of these higher-alpha olefin however in order to produce the ethylene compound with the disclosed density and melt flow rates, the amount of higher alpha-olefins would fall within the claimed range. In summation, Karim et al. discloses a process for the ethylene compound which would result in it being a linear ethylene polymer. Karim et al. also discloses the same higher alpha-olefins as in the instant application and, in order to produce the low densities required, the amount of alpha-olefins would be selected to lie within the instantly claimed range as would be obvious to one having ordinary skill.

11. Regarding applicant's arguments against the density of the acrylate copolymer, the examiner maintains that because Karim et al. discloses copolymers with melt flow rates (2-40) which overlap those of the instant application (2), the densities will likewise overlap.

12. Regarding applicant's arguments against the optimization of the relative amount of compound I and II in Karim et al., the examiner disagrees that there is not motivation to optimize these components. Karim et al. specifically discloses that the relative amounts of the compounds

can be adjustable to control a myriad of final properties ("optimum compositions for any such system can be established with a minimum of experimental work" C4, L30-50).

Conclusion

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL B. NELSON whose telephone number is (571) 270-3877. The examiner can normally be reached on Monday through Thursday 6AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Sample can be reached on (571) 272-1376. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/David R. Sample/
Supervisory Patent Examiner, Art Unit 1794

/MN/
08/18/09